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Paper No. 11

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JUN 1 8 2003

**OFFICE OF PETITIONS**

In re Application of  
Steven D. Roach  
Application No. 10/003,096  
Filed: December 6, 2001  
Attorney Docket No.: LT-140  
Title: CIRCUITRY AND METHODS FOR  
IMPROVING THE PERFORMANCE OF A  
LIGHT EMITTING ELEMENT

DECISION DISMISSING PETITION  
UNDER 37 C.F.R. §1.137(F) AS MOOT

This is a decision on the petition filed on April 8, 2003, pursuant to 37 C.F.R. §1.137(f), to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

- (1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication<sup>1</sup>;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
- (3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner states that the instant nonprovisional application is the subject of an application filed in either a foreign country on November 28, 2002.

On October 18, 2002, a Request to Rescind the Nonpublication Request was filed with the Office. Therefore, the Nonpublication Request was rescinded prior to the foreign filing. If an applicant makes a nonpublication request and then rescinds the nonpublication request before or

<sup>1</sup> See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at <http://www.uspto.gov/web/forms/index.html>.

on the date a counterpart application is filed in an eighteen-month publication country, the application will be treated as if the nonpublication request were never made<sup>2</sup>.

37 C.F.R. §1.137(f) requires a statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. Since the statement contained in the instant petition varies from the language required by 37 C.F.R. §1.137(f), the statement contained in the instant petition is being construed as the statement required by 37 C.F.R. §1.137(f) and petitioner must notify the Office if this is not a correct interpretation of the statement contained in the instant petition.

For the reason set forth above, the petition under 37 C.F.R. §1.137(f) is **DISMISSED AS MOOT**.

As such, no petition fee is necessary. The petition fee has been refunded to petitioner's Deposit Account, as authorized in the petition.

After the mailing of this decision, the application file will be forwarded to Technology Center 2800 for further processing.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.



Paul Shanoski  
Attorney  
Office of Petitions  
United States Patent and Trademark Office

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2 Rescission generally has the effect of voiding, repealing, or annulling a previous action. See Black's Law Dictionary 1308 (7th ed. 1999) (second definition: to make void, to repeal, or annul). Thus, if an applicant makes a nonpublication request under 35 U.S.C. § 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country, the nonpublication request under 35 U.S.C. § 122(b)(2)(B)(i) will be treated as annulled and the application will be treated as if the nonpublication request had never been made. See <http://www.uspto.gov/web/offices/pac/dapp/opla/preognitice/35usc122b2binterpret.htm>.